Jan 7 27. 1862

677

SUPREME COURT OF THE UNITED STATES.

No. ~~332~~. 168.90.

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

LYSANDER W. BABBITT.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

Mr Justice Clifford

G. S. GIDEON, Printer, 511 Ninth street, Washington.

Received
Jan 8 Wayne

appellees to ...

SUPREME COURT OF THE UNITED STATES.

No. 332

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THE UNITED STATES OF AMERICA,
District of Iowa, ss.

In the District Court for said May term, 1858, southern division of said district.

THE UNITED STATES OF AMERICA
vs.
LYSANDER W. BABBITT, CLAIBORNE HALL, JACKSON A. BURNETT, and BIRD H. COVINGTON. } Debt.

To the Court: The plaintiff in this case, the United States of America, claims of the defendants, said Lysander W. Babbitt, Claiborne Hall, Jackson A. Burnett, and Bird H. Covington, the sum of ten thousand dollars, which said sum the said plaintiff says is now due it from the said defendants. And for cause of such claim the plaintiff says that heretofore, to wit, on the ninth day of May, A. D. 1853, the said Lysander W. Babbitt, having before that time been appointed register of the land office for the district of land subject to sale at Kanesville, in the State of Iowa, in the district of Iowa, did then and there execute and deliver to the plaintiff his bond as such register in the penal sum of ten thousand dollars, with the said Claiborne Hall, Jackson A. Burnett, and Bird H. Covington as his sureties, who executed then and there said bond as such sureties, which said bond was conditioned that the said Lysander W. Babbitt had then, and that he would thereafter truly and faithfully execute and discharge all the duties of his said offic ; and the said Lysander W. Babbitt then and there, by virtue of said bond, undertook and promised the plaintiff that he then had, and would still continue truly and faithfully to execute and discharge all the duties of said office; and the said Clairborne Hall, Jackson A. Burnett, and Bird Covington then and there, by virtue of their said bond, undertook and promised the pl'ff that the said Lysander A. Babbitt then had, and that he still should continue truly and faithfully to execute and discharge all the duties of said office of register as aforesaid, which said bond so executed by the defendants the plaintiff here gives a copy of, and which copy it makes part of its petition in words and figures, that is to say:

UNITED STATES OF AMERICA.

TREASURY DEPARTMENT,
July 30th, 1857.

Pursuant to the act of Congress of 22d February, 1849, I hereby certify that the annexed is a true copy of the original bond of Lysander W. Babbitt, register of the land office for the district of lands subject to sale at Kanesville, in the State of Iowa, dated the 9th day of May, 1853, with the accompanying papers, the original being on file in this department.

In witness whereof I have hereunto set my hand and caused the seal of the Treasury Department to be affixed on the day and year first above written. [L. S.]

HOWELL COBB,
Secretary of the Treasury.

Know all men by these presents, that we, LysanderW. Babbitt, of Knoxville, Marion county, Iowa, Claiborne Hall, of Knoxville, Marion county, Iowa, Jackson A. Bennett, of Knoxville, Marion county, Iowa, Bird H. Covington, of Knoxville, Marion county, Iowa, are held and firmly bound unto the United States of America, in the full and just sum of ten thousand dollars, money of the United States, to which payment, well and truly to be made, we bind ourselves, jointly and severally, our joint and several heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this ninth day of May, in the year one thousand eight hundred and fifty-three.

The condition of the foregoing obligation is such, that whereas the President of the United States hath, pursuant to law, appointed the said Lysander W. Babbitt register of the land office for the district of lands subject to sale *of* Kanesville, in the State of Iowa, for the term of four years from the sixth day of April, 1853, by commission, dated the eight day of April, 1853:

Now, therefore, if the said Lysander W. Babbitt has truly and faithfully executed and discharged, and shall continue truly and faithfully to execute and discharge all the duties of the said office, according to law, then the above obligation to be void and of none effect, otherwise it shall abide and remain in full force and virtue.

LYSANDER W. BABBITT, [L. S.]
CLAIBORNE HALL, [L. S.]
JACKSON A. BURNETT, [L. S.]
BIRD H. COVINGTON. [L. S.]

Signed, sealed and delivered in the presence of—
Smith Hooton, Knoxville, Marion co., Iowa.
Jackson A. Burnett, Knoxville, Marion co., Iowa.
Lorenzo D. Jackson, Knoxville, Marion co., Iowa.
James Clark, Knoxville, Marion co., Iowa.

Joseph Brobst, Russell B. Cochran, } Knoxville, Marion co., Iowa.
A. B. Miller, Knoxville.
Admiral B. Miller, Edwin G. Stanfield, } Knoxville, Marion co., Iowa.

STATE OF IOWA,
Marion County, ss.

I, Bird H. Covington, do solemnly swear that I am lawfully seized of and own property of the value of seventy-two hundred dollars, and that I verily believe myself to be worth the above sum after all my just debts and responsibilities are paid.

BIRD H. COVINGTON.

STATE OF IOWA,
Marion County.

Sworn to and subscribed before me this tenth day of May, A. D. 1853. In testimony whereof I have hereunto set my hand and affixed the county seal hereto at Knoxville, in said county, day and date first above written.

[L. S.] JOSEPH BROBST,
County Judge.

I, Jackson A. Burnett, do solemnly swear that I am worth the sum of one thousand and five hundred dollars, after the payment of all my debts and responsibilities.

JACKSON A. BURNETT.

STATE OF IOWA,
Marion County, ss.

Sworn and subscribed before me this tenth day of May, A. D. 1853. In witness whereof I have hereunto set my hand and affixed the country seal hereto at Knoxville, this tenth day of May, A. D. 1853.

[L. S.] JOSEPH BROBST,
County Judge.

I, Claiborne Hall, do solemnly swear that I am worth the sum of three thousand dollars, after the payment of all my debts and responsibilities, to the best of my knowledge and belief.

CLAIBORNE HALL.

STATE OF IOWA,
Marion County, ss.

Sworn and subscribed before me this tenth day of May, A. D. 1853. Witness whereof I have hereunto set my hand and affixed the county seal hereto at Knoxville, in said county, day and date above written.

[L. S.] JOSEPH BROBST,
County Judge.

OFFICE OF U. S. ATTORNEY FOR THE DISTRICT OF IOWA,
KEOSAUQUA, *May 18th*, 1853.

I hereby certify that I have examined the bond in the penal sum of ten thousand dollars, payable to the United States of America, executed by Lysander W. Babbitt as principal, and by Claiborne Hall, Jackson A. Burnett, and Bird H. Covington, as sureties, dated the ninth day of May, 1853, and conditioned for the faithful execution and discharge by the said Lysander W. Babbitt of the duties of register of the land office for the district of lands subject to sale at Kanesville, in the State of Iowa; and I do further certify that I have examined the affidavits of justification of the said sureties, Claiborne Hall, Jackson A. Burnett, and Bird H. Covington, and from such examination, and from my knowledge of said sureties, do certify that they are sufficient to secure the payment of the sum of ten thousand dollars.

Given under my hand at Keosauqua, Iowa, the day and year first above written.

JOSEPH C. KNAPP,
Attorney of the U. S. for the district of Iowa.

I, Lysander W. Babbitt, having been appointed to the office of register of the land office for the district of lands subject to sale at Kanesville, in the State of Iowa, do solemnly, sincerely and truly swear that I will diligently and faithfully execute the duties of the said office of register to the best of my endeavors. I further swear that I will support the Constitution of the United States.

LYSANDER W. BABBITT.

Sworn and subscribed this ninth day of May, 1853, before me. Witness my hand and seal of the county of Marion and State of Iowa.

[SEAL.] JOSEPH BROBST,
County Judge.

I, Admiral B. Miller, clerk of the dist. court, do hereby certify that Joseph Brobst, county judge of Marion county, Iowa, who administered the above oaths, was, at the time of doing so, duly authorized to administer the same, and that full faith and credit are due to his official attestations.

In testimony whereof I have hereto set my hand and affixed the [SEAL.] seal of the district court of Marion county, Iowa, this 10th day of May, 1853.

ADMIRAL B. MILLER,
Clk D. C. Iowa.

And which said copy (marked petition, page 4, petition, page 5, petition, page 6, petition, page 7, petition, page 8, petition, page

9, petition, page 10,) the pl'ff will offer, with the certificate thereto attached, as evidence in said cause on the trial thereof.

And the said plaintiff avers that it was a part of the duties of said office of register to receive the moneys of the plaintiff at said land office, paid there for land fees, &c., &c., and to pay all said moneys so received as such register, whether for lands sold or for fees as such register, (as hereinafter more particularly specified and set out,) to the plaintiff, as required by law; and the plaintiff avers that Lysander W. Babbitt, as such register, and by virtue of his said office, did receive large sums of money, to wit, the sum of ten thousand dollars, for lands and for fees, as such register, as hereinafter is more particularly specified; which said sums of money it was his duty, as such register, and he was required by the obligations of his said bond, to pay to the plaintiff; and the plaintiff expressly charges and avers that the said Lysander W. Babbitt, as such register as aforesaid, and by virtue of his said office, did, during the time in which he held and possessed said office, to wit, during his first, second, third, and fourth official years, to wit, from the 6th day of April, 1853, to the 20th of October, 1856, receive as fees for the location of military bounty land warrants, under the provisions of the acts of Congress approved 11th February, 1847, 25th of September, 1850, 22d March, 1822, and 3d of March, 1855, the sum total of $13,879 08, and of that sum the said Babbitt still holds and refuses to pay to the plaintiff, though often requested and directed by the proper officer so to do, the sum of nine thousand eight hundred and sixteen dollars and twenty-four cents.; which said sum, with whatever of interest may be lawfully due on the same, is the true amount claimed as damages in this case, and for which said sum, with interest as aforesaid, the plaintiff prays judgment.

And the plaintiff especially directs the attention of the defendants to, as a part of this petition, the annexed statement of account, marked No. 13,388, and the statements A, B, C, D, and E, thereto, and to this petition, and all of which, with said , are made part of this petition, and will be offered in evidence on the trial of this cause.

Said statement referred to bears date Department of the Interior, General Land Office, 30th of May, 1857, and which is signed by Tho's A. Hendricks, Commissioner, admitted and certified 28th day of July, 1857, by W. Medill, Comptroller, and which said account, with the attached statements marked A, B, C, D, and E, the plaintiff refers to as a part of this petition for a full and specific statement in regard to such fees, the amount, the time of reception, under what acts received, &c.

TREASURY DEPARTMENT, REGISTER'S OFFICE,
August 12, 1857.

Pursuant to the act of March 3d, 1797, entitled "An act to provide more effectually for the settlement of accounts between the United States and receivers of public moneys," I, F. Bigger, Register of the Treasury Department, do hereby certify that the annexed are true copies of original report numbered 13,388, on file in this office, upon an account between the United States and Lysander W. Babbitt, late register of the land office at Kanesville, Iowa, and of original statements marked A, B, C, D, and E, accompanying said report, also on file in this office.

F. BIGGER,
Register.

Be it remembered that F. Bigger, esq., who certified the annexed transcript, is now, and was at the time of doing so, Register of the Treasury of the United States, and that full faith and credit are due to his official attestations.

In testimony whereof, I, Howell Cobb, Secretary of the Treasury of the United States, have hereunto subscribed my name and caused to be affixed the seal of this department, at [SEAL.] the city of Washington, this twelfth day of August, in the year of our Lord 1857.

HOWELL COBB,
Secretary of the Treasury.

No. 13,388. DEPARTMENT OF THE INTERIOR,
General Land Office, 30*th May*, 1857.

SIR: I have adjusted an account between the United States and Lysander W. Babbitt, late register of the land office at Kanesville, Iowa, (but known as Council Bluffs, Iowa,) on account of fees received by him for the location of military bounty land warrants under the provisions of the acts of Congress approved 11 February, 1847, 25 September, 1850, 22 March, 1852, and 3 March 1855, from the 6 April, 1853, the day expressed in his commission as the commencement of his term of service, to the 20 October, 1856, when his successor receipted to him for the books and papers of his office, and find that he stands chargeable on said account as follows:

To fees received for locating military bounty land warrants:

For this amount received by him during his first official year, being from the 6 April, 1853, to the 5 April, 1854, as per statements A, B, D, and E, herewith.....	$589 81
For this amount received by him during his second official year, being from the 6 April, 1854, to the 5 April, 1855, as per statements A, B, D, and E, herewith....	559 04

For this amount received by him during his third official year, being from the 6 April, 1855, to the 5 April, 1856, as per statements A, B, C, D, and E, herewith.....	7,457 79	
For this amount received by him during his fourth official year, being from the 6 April, 1856, to the 20 October, 1856, as per statements A, B, C, D, and E, herewith	5,272 44	
		$13,879 08
I also find that he is entitled to the following credits, viz: by commissions for locating bounty land warrants: For this amount to which he is entitled as commissions on $58,981 26, the value of 47,185.01 acres of land, at $1 $\frac{25}{100}$ per acre, located by warrants under the provisions of the acts of 1847, 1850 and 1852, and for which quantity said warrants were relinquished as per statements A, B, D, and E, herewith.....	589 81	
For this amount to which he is entitled as commissions on $527,244 25, the value of 421,795.40 acres of land, at $1 $\frac{25}{100}$ per acre, located by warrants under the provisions of the acts of 1847, 1850, 1852, and 1855, and for which quantity said warrants were relinquished, as per statements A, B, C, D, and E, herewith, sufficient to make his maximum compensation for his fourth official year, being from the 6 April, 1856, to the 20 October, 1856.....	1,937 38	
		2,527 19
		$2,528 19
By warrants on the Treasurer:		
For amount of counter warrant No. 113, dated 19 May, 1857, which issued upon pay warrant No. 240, dated May 19, 1857, being for his commissions on lands entered, and as follows:		
For his first official year, due him..	03	
For his second official year, sufficient to make his maximum.....	359 73	
For his third official year, sufficient to make his maximum.....	586 10	

For his fourth official year due him. 562 62		
	1,508 48	
For amount of counter warrant No. 168, dated 27 May, 1857, which issued upon pay warrant No. 4,275, dated 27 May, 1857, being for salary due him from the 1st to 20 October, 1856.....	27 17	
		1,535 65
		4,062 84
And that the balance due by him to the United States on the 20 October, 1856, amounted to.....		9,816 24
		13,879 08

As appears from the documents, vouchers, and statements A, B, C, D, and E, herewith respectfully submitted for your action and decision thereon.

THOS. A. HENDRICKS,
Commissioner.

WILLIAM MEDILL, Esq.,
First Comptroller of the Treasury.

TREASURY DEPARTMENT,
Comptroller's Office.

Admitted and certified this 28th day of July, 1857.

W. MEDILL,
Comptroller.

To the REGISTER.

Statement showing the number of acres of land locate l at the land office at Council Bluffs, Iowa, with military bounty land warrants, issued under the act of February 11, 1847, with the number of warrants of each denomination, from June 6, 1853, to October 20, 1856, inclusive.

In what year located.	Number of warrants located.	Denomination of warrants located.	Number of acres represented.	Excess in area paid for with money.	Deficiencies in area.
From 6th June, 1853, to 5th of April, 1854, inclusive.	75 2	For 160 acres. " 40 "	12,000.00 acres. 80.00 "		
	77	.....	12,080.00 " 10.36	38.60 acres.	10.36 acres.
Deduct deficiency	.....	.....	12,069.64 "	38.60 "	10.36 "
From the 6th of April, 1854, to the 5th of April, 1855, inclusive.	49 10	For 160 acres. " 40 "	7,840.00 acres. 400.00 "		
	59	.....	8,240.00 " 12.00 "	26.57 acres.	12.00 acres.
Deduct deficiency	.....	.....	8,228.00 "	26.57 "	12.00 "

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Statement—Continued.

In what year located.	Number of warrants located.	Denomination of warrants located.	Number of acres represented.	Excess in area paid for in money.	Deficiencies in area.
From the 6th of April, 1855, to the 5th of April, 1856, inclusive.	79 24	For 160 acres. " 40 "	12,640.00 acres. 960.00 "		
	103	.....	13,600.00 " 43.23 "	61.40 acres.	43.23 acres.
Deduct deficiency.....	.....	.....			
			13,556.77 "	61.40 "	43.23 "
From the 6th of April, 1856, to the 20th of October, 1856, inclusive.	29 6	For 160 acres. " 40 "	4,640.00 acres. 240.00 "		
	35	.....	4,880.00 " 6.22 "	2.40 acres.	6.22 acres.
			4,873.78 "	2.40 "	6.22 "
RECAPITULATON.					
From 6th of June, 1853, to 5th of April, 1854, inclusive.....	.....	.....	12,080.00 acres.	38.60 acres.	10.36 acres.
From 6th April, 1854, to 5th of April, 1855, inclusive.....	.....	.....	8,240.00 "	26.57 "	12.00 "

From 6th of April, 1855, to 5th of April, 1856, inclusive.....	.....	.....	13,600.00 "	61.40 "	43.23 "
From 6th April, 1856, to 20th of October, 1856, inclusive.....	.....	.....	4,880.00 "	2.40 "	6.22 "
			38,800.00 "	128.97 "	71.81 "
			77.81 "		
Total number of acres covered with warrants	.....	.....	38,728.19 "		
	232	For 160 acres.	37,120.00 acres.	128.97 acres.	71.81 acres.
	42	" 40 "	1,680.00 "		
	274	.....	38,800.00 "		
Deduct deficiency.....	.....	.....	71.81 "		
Total number of acres covered with warrants as above.....	.....	.....	38,728.19 "		

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B.—*Acts of* 1850 *and* 1852.

Statement showing the No. of acres of land located at the Council Bluffs land office, with bounty land warrants issued under the acts of the 28th of September, 1850, and the 22d of March, 1852, together with the No. of warrants of various grades, from April 6th, 1853, to October 20th, 1856, both inclusive.

	Acts.		No. of warrants.	Grade of warrants.	No. of acres represented.	Excess.	Deficiencies.
	1850.	1852.					
From April 6th, 1853, to April 5th, 1854.	56	.....	.....	160	8,960		
	152	.....	.....	80	12,160		
	274	.....	.....	40	10,960		
			482		32,080	350.33	44.63
Deduct deficiency.....	.....	.....	.....	.....	44.63		
					32,035.37	350.33	44.63
From April 6, 1854, to April 5, 1855.	83	.....	.....	160	13,280		
	139	.....	.....	80	11,120		
	218	.....	.....	40	8 720		
			440		33,120	151.74	23.37

Deduct deficiency					23.37		
					33,096.63	151.74	23.37
From 6 April, 1855, to 5 April, 1856.	94			160	15,040		
	161			80	12,880		
	266			40	10,640		
			521		38,560	178.17	39.56
Deduct deficiency					39.56		
					38,520.44	178.17	39.56
From 6 April, 1856, to 20 October, 1856.	19			160	3,040		
	55			80	4,400		
	67			40	2,680		
			141		10,120	8.47	17.91
Deduct deficiency					17.91		
					10,102.09		
From 6 April, 1853, to 5 April, 1854.		12		160	1,920		
		6		80	480		
		17		40	680	50.84	
			35		3,080	50.84	

Statement – Continued.

	Acts.		No. of warrants.	Grade of warrants.	No. of acres represented.	Excess.	Deficiencies.
	1850.	1852.					
From 6 April, 1854, to 5 April, 1855.	.....	7	.....	160	1,120		
	.....	10	.....	80	800		
	.....	37	.....	40	1,480		
			54		3,400	14.10	1
Deduct deficiency	.....	.....	.....	.....	1		
					3.399	14.10	1
From 6 April, 1855, to 5 April, 1856.	.....	4	.....	160	640		
	.....	8	.....	80	640		
	.....	24	.....	40	960		
			36		2,240	24.07	11.76
Deduct deficiency	.....	.....	.....	.....	11.76		
					2,228.24	24.07	11.76

From 6 April, 1856, to 20 October, 1856.	.....	1	.....	160	160		
	.....	7	.....	40	280		
			8				
					440		
Recapitulation	252	.....	.....	160	40,320		
	507	.....	.....	80	40,560		
	825	.....	.....	40	33,000		
						688.71	125.47
					113,880		
Deduct deficiency	.....	.....	.....	.....	125.47		
					113,754.53		
	.....	24	.....	160	3,840		
	.....	24	.....	80	1,920		
	.....	85	.....	40	3,400		
						89.01	12.76
					9,160		
Deduct deficiency	.....	.....	.....	.....	12.76		
					9,147.24	89.01	12.76
Grand totals	.....	.....	.....	.....	122,801.77	777.72	138.23

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C.—Act of 1855.

Statement showing the No. of acres of land located at the Council Bluffs land office, with bounty land warrants, issued under the act of 3d March, 1855, together with the No. of warrants of various grades from April 6th, 1855, to April 5th, 1856, both inclusive.

Month.	No. of war'nts.	Grade of war'nts.	Number of acres represented.	Excess.	Deficiencies.
April, 1855.....	None	None	None		
May, 1855.....	None	None	None		
June, 1855.....	8	160	1,280		
	14	120	1,680		
			2,960	18	134
Deduct deficiency	.....	.....	1.34		
			2.958.66	18	134
July, 1855.....	63	160	10,080		
	167	120	20,040		
	3	80	240		
			30,360	143.96	43.81
Deduct deficiency	.....	.....	43 81		
			30,316.19	143.96	43.81
August, 1855....	76	160	12,160		
	158	120	18,960		
	63	80	5,040		
			36,160	245.73	12.37
Deduct deficiency	.....	.....	12.37		
			36,147.63	245.73	12.37
September, 1855.	106	160	16,960		
	321	120	38,520		
	133	80	10,640		
			66,120	306.43	38.01

Statement—Continued.

Month.	No. of war'nts.	Grade of war'nts.	Number of acres represented.	Excess.	Deficiencies.
Deduct deficiency	.....	.....	38.01		
			66,081.99	306.43	38.61
October, 1855....	109	160	17,440		
	360	120	43,200		
	195	80	15,600		
				292.35	31.61
			76,240		
Deduct deficiency	.....	.....	31.61		
			76,208.39	292.35	31.61
November, 1855.	121	160	19,360		
	483	120	57,960		
	165	80	13,200		
				429.57	16.70
			90,520		
Deduct deficiency	.....	.....	16.70		
			90,503.30	429.57	16.70
December, 1855.	154	160	24,640		
	375	120	45,000		
	131	80	10,480		
	1	40	40		
				270.73	54.06
			80,160		
Deduct deficiency	.....	.....	54.06		
			80.105.94	270.73	54.06
January, 1856....	30	160	4,800		
	132	120	15,840		
	55	80	4,400		
				60.15	28.50
			25,040		
Deduct deficiency	.....	.....	28.50		
			25,011.50	60.15	28.50

Statement—Continued.

Month.	No. of war'nts.	Grade of war'nts.	Number of acres represented.	Excess.	Deficiencies.
February, 1856.	65	160	10,400		
	209	120	25,080		
	60	80	4,800		
				144.47	19.91
			40,280		
Deduct deficiency	.....	.....	19.91		
			40,260.09	144.47	19.91
March, 1856.....	72	160	11,520		
	428	120	51,360		
	106	80	8,480		
	2	40	80		
				315.46	60.65
			71,440		
Deduct deficiency	.....	.....	60.65		
			71,379.35	315.46	60.65
From April 1st to 5th, 1856.	39	160	6,240		
	116	120	13,920		
	40	80	3,200		
				11.78	15.20
			23,360		
			15.20		
			23,344.80	11.78	15.20
Recapitulation	843	160	134,880		
	2,763	120	331,560		
	951	80	76,080		
	3	40	120		
				2,220.81	322.16
			542,640		
			322.16		
			542,317.84	2,220.81	322.16

Statement showing the number of acres of land located at the land office at Council Bluffs, Iowa, from April 6th, 1856 to October 20th, 1856, both inclusive, with Bounty Land Warrants issued under act of March 3d, 1855.

Month in which made.	No. of warrants located.	Grade of w'rnts.	No. of acres represented by warrants.	Excess.	Defic'ncies.
April, 1856.....	264	160	42,240		
	1,023	120	122,760		
	323	80	25,840		
	4	40	160		
				595.22	173.50
			191,000		
Deduct deficiency....	.....	.....	173.50		
			190,826.50	595.22	173.50
May, 1856.....	285	160	45,600		
	1,008	120	120,960		
	413	80	33,040		
	2	40	80		
	1	60	60		
				514.66	220.69
			199,740		
Deduct deficiency...	.....	.....	220.69		
			199,519.31	514.66	220.69
June, 1856	9	160	1,440		
	2	120	240		
	4	80	320		
				13.82	14.61
			2,000		
Deduct deficiency...	.....	.....	14.61		
			1,985.39	13.82	14.61
July, 1856.....	13	160	2,080		
	10	120	1,200		
	3	80	240	32.46	
			3,520	32.46	

Statement—Continued.

Month in which made.	No. of warrants located.	Grade of w'rnts.	No. of acres represented by warrants.	Excess.	Defic'ncies.
August, 1856.....	9	160	1,440		
	6	120	720		
	5	80	400	20.23	
			2,560	20.23	
September, 1856....	20	160	3,200		
	6	120	720		
	3	80	240		
				85.73	23.21
			4,160		
Deduct deficiency...	.....	.....	23.21		
			4,136.79	85.73	23.21
October 1st to 20th, 1856, both inclusive.	18	160	2,880		
	4	120	480		
	6	80	480		
				30.18	8.46
			3,840		
Deduct deficiency...	.....	.....	8.46		
			3,831.54	30.18	8.46

Recapitulation.

No. of warrants.	Grade of warrants.	No. of acres represented.	Excess.	Defic'ncies.
618	160	98,880		
2,059	120	247,080		
757	80	60,560		
1	60	60		
6	40	240		
			1,292.30	440.47
		406,820		
		440.47		
		406,379.53	1,292.30	440.47

D.

Recapitulation under acts 1847, 1850, 1852, *and* 1855.

First official year, commencing 6 April, 1853, and ending 5 April, 1854.

	160	120	80	60	40	Fees received equal to one per cent. on land at $1.25 per acre.	Acres for which relinquished.	Value at $1.25 per acre.
Act 1847	75	.....	.....	.....	2	.....	12,069.64	
1850	56	.....	152	.....	274	.....	32,035.37	
1852	12	.....	6	.....	17	.....	3,080	
	143	.....	158	.....	293	589 81	47,185.01	58,981 26

Second official year, commencing 6 April, 1854, and ending 5 April, 1855.

Act 1847	49	.....	.....	.....	10	.....	8,228	
1850	83	.....	139	.....	218	.....	33,096.63	
1852	7	.....	10	.....	37	.....	3,399	
	139	.....	149	.....	265	559 04	44,723.63	55,904 53

Statement—Continued.

Third official year, commencing 6 April, 1855, and ending 5 April, 1856.

	160	120	80	60	40	Fees received equal to one per cent. on land at $1.25 per acre.	Acres for which relinquished.	Value at $1.25 per acre.
Act 1847	79	.....	.....	.....	24	.....	13,556.77	
1850	94	.....	161	.....	266	.....	38,520.44	
1852	4	.....	8	.....	24	.....	2,228.24	
1855	843	2,763	951	.....	3	.....	542,317.84	
	1,020	2,763	1,120		317	7,457 79	596,623.29	745,779 11

Fourth official year, commencing 6 April, 1856, and ending 20th October, 1856.

Act 1847	29	.....	.....	.....	6	.....	4,873.78	
1850	19	.....	55	.....	67	.....	10,102.09	
1852	1	.....	.....	.....	7	.....	440	
1855	618	2,059	757	1	6	.....	406,379.53	
	667	2,059	812	1	86	5,272 44	421,795.40	527,244 25

General Land Office, 30 May, 1857. THOS. A. HENDRICKS, *Commissioner.*

E.

Statement of Commissions earned by Lysander W. Babbitt, Register of the Land Office at Kaneseville, Iowa, (but known as Council Bluffs, Iowa,) in each of his official years, on lands entered at said office; the Commissions paid to him; the Commissions due to him, and paid by Treasury warrant No. 4240; the Commissions to which he is entitled on the value of lands located by Military Bounty Land Warrants; the total amount of Commissions received by him; fees received for the location of Military Bounty Land Warrants, and the fees to be accounted for by him.

First official year, commencing 6th April, 1853, and ending 5th April, 1854.

Periods.	Lands entered.	Commissions earned by Register on lands entered.	Commissions of the Register on lands entered.		Commissions on locations earned by the Register.	Total commissions received.	Fees received.	Fees to be accounted for.
			Paid by Receiver.	Due to him and paid by warrant No. 4240.				
1853—6th April to 30th June.	5,375 97	53 76	53 76	.....				
qr. 3.	61,572 90	615 73	615 7	.....				
qr. 4.	28,744 93	287 45	287 45	01	589 81	.....	589 81	
1854—qr. 1.	41,787 70	417 88	417 88	02				
1 April to 5 April.	613 06	6 13	6 13	.....				
	138,094 56	1,380 95	1,380 92	03	589 81	1,970 76	589 81	

Statement—Continued.

Second official year, commencing 6th April, 1854, and ending 5th April, 1855.

Periods.	Lands entered.	Commissions earned by Register on lands entered.	Commissions of the Register on lands entered.		Commissions on locations earned by the Register.	Total commissions received.	Fees received.	Fees to be accounted for.
			Paid by Receiver.	Due to him and paid by warrant No. 4240.				
1854—6th April to 30th June. qr. 3.	104,585 88	1,045 76	449 86					
	58,933 95	589 34	589 34					
	134,756 41	1,347 56	1,101 07	359 73	.....	.....	559 04	559 04
	58,358 56	583 59	.....					
	17,911 91	179 12	.....					
	374,536 71	3,745 37	2,140 27	359 73	.....	2,500	559 04	559 04

Third official year, commencing 6th April, 1855, and ending 5th April, 1856.

1855—6th April to 30th June.	163,608 58	1,636 09	.....					
qr. 3.	125,468 52	1,245 69	1,249 93					
qr. 4.	139,440 38	1,394 40	663 97	586 10	.....	.....	7,457 79	7,457 79
1856—qr. 1.	11,415 13	114 14	.....					
1 April to 5 April.	1,388 67	13 89	.....					
	441,321 28	4,413 22	1,913 90	586 10	.....	2,500 00	7,457 79	7,457 79

Fourth official year, commencing 6th April, 1856, and ending 20th October, 1856.

1856—6th April to 30th June.	50,259 98	502 60	.....	502 60				
qr. 3.	4,910 51	49 11	.....	49 11	1,937 38	.....	5,272 44	3,335 06
1 October to October.	1,091	10 91	.....	10 91				
	56,261 49	562 62	.....	562 62	1,937 38	2,500 00	5,272 44	3,335 06

Statement—Continued.

		Fees received.	Fees to be accounted for.
1 official year—Fees received by him		589 81	
Less commissions of $58,981 26—Value of land located		589 81	
2 official year—Fees received by him		559 04	
Having earned his maximum by commissions on lands entered, he is entitled to no commissions on locations		.....	559 04
3 official year—Fees received by him		7,457 79	
Having earned his maximum by commissions on lands entered, he is entitled to no commissions on locations		.....	7,457 79
4 official year—Fees received by him		5,272 44	
Less commissions on locations allowed him to make his maximum compensation		1,937 38	
			3,335 06
From which deduct amount of Treasury Interior warrant No. 240, dated 19th May, 1857, which issued in his favor for commissions due him as follows:			11,351 89
1 official year	03		
2 " "	359 73		
3 " "	586 10		
4 " "	562 62		
		1,508 48	

Am't of Treasury Interior warrant No. 4275, dated 27 May, 1857, which issued in his favor for salary from 1 to 20 October, 1856	27 17	1,535 65
Making for fees received by him, and to be accounted, amounting to	.....	9,816 24

General Land Office, 30th May, 1857.

THOS. A. HENDRICKS,
Commissioner.

And the pl'ff says that the said Lysander W. Babbitt received, as such register, the said sums in said foregoing statement named, at the times named and for the lands and fees named in said statement, and that he refused, and still refuses and neglects, to pay to this plaintiff the said sums of money or any part of the same, but in violation of the obligations of his said bond, and in violation of the duties of his said office, unlawfully and wrongfully keeps and retains the same, and that he therein has broken the obligations of his said bond, and the plaintiff has a right to demand and recover therefor of the said defendant the said sum so claimed as aforesaid; and your petitioner shows that the said bond is its property, as also the said balance due it, as shown by said statement of account. The plaintiff, therefore, asks judgment against the said defendant for the amount so by said statement shown to be due it from the said Babbitt, with interest and costs.

JOSEPH C. KNAPP,
Att'y of the United States for the district of Iowa.

Summons.

UNITED STATES OF AMERICA,
District of Iowa, ss.

To the Marshal of said District, greeting:

In the name of the President of the United States, we command you to summon Lysander W. Babbitt, Claiborne Hall, Jackson A. Burnett and Bird H. Covington, citizens of, and resident in the State and district of Iowa, if they be found in your bailiwick, to be and appear before the district court of the United States for the district of Iowa aforesaid, at Burlington, in said district, on the third Monday in the month of May next, to answer unto the United States of America, *citizen of the State of* of a plea of debt—debt, $10,000; damages, ten thousand—and have then and there this writ.

Witness the Honorable J. M. Love, judge of said district court, this 6th day of October, A. D. 1857, and in the eighty-second year of the independence of United States of America.

[L. S.]

Attest: JOHN C. BURNS,
Clerk U. S. Court.

Received the within summons October 6th, 1858, and personally served the same on the within named defendant, Lysander W. Babbitt, by reading the same to him, the 30th day of January, A. D. 1858, and by leaving a copy of said summons with said Babbitt.

LAUREL SUMMERS,
U. S. Marshal.
By H. J. BARNES, *Deputy.*

The within named defendants, Claiborne Hall, Jackson A. Burnett and Bird H. Covington, not found in my district.

LAUREL SUMMERS,
U. S. Marshal.
By H. J. BARNES, *Deputy.*

Fees—Service	$2 00
Mileage	21 00
	$23 00

Filed May 18, 1858.

J. C. BURNS, *Clerk.*

Summons.

UNITED STATES OF AMERICA,
District of Iowa, ss.

To the Marshal of said district, greeting:

In the name of the President of the United States, we command you to summon Lysander W. Babbitt, Claiborne Hall, Jackson A. Burnett and Bird H. Covington, citizens of and resident in the State and district of Iowa, if they be found in your bailiwick, to be and appear before the district court of the United States for the district of Iowa aforesaid, at Burlington, in the southern division of said district, on the 3d Monday in the month of May next, to answer unto the United States of America, *citizen of the State of* of a plea of debt—debt, $10,000; damages, ten thousand dollars—and have then and there this writ.

Witness the Honorable J. M. Love, judge of said district court, this 6th day of October, 1857, and in the eighty-second year of the independence of United States of America.
[L. S.]
Attest: JOHN C. BURNS, *Clerk.*

This writ came into my hands on the 12th day of November, 1857, and I have served the same, by reading to *the* Claiborne Hall, and by giving him an attested copy thereof, at Knoxville, Iowa, on the 5th day of April, 1858. I served said writ on the said Jackson A. Burnett, by delivering to Mrs. Burnett, his wife and a member of his family, over the age of 14 years, at his usual place of residence, in Knoxville, Iowa, on the 5th day of April, 1858, an attested copy thereof, and explaining to her the contents of the same, the said Jackson A. Burnett not being found. I served the same on the said Bird H. Covington, on the 7th day of April, A. D. 1858, at Decatur city, Decatur county, Iowa, by reading the same to him, he refusing to receive a copy.

April 14th, 1858.

LAUREL SUMMERS,
U. S. Marshal.
By WM. D. NEELY, *Deputy.*

Fees—Service on 3 def'ts	$6 00
Mileage, 200 miles	12 00
	$18 00

Filed May 18, 1858.

J. C. BURNS, *Clerk.*

In District Court of the U. S.—Oct. Term, 1858.

UNITED STATES
vs.
LYSANDER W. BABBITT, &c.

And now come the def'ts and defend, and say that the said petition of pl'ff and the matters therein contained are not sufficient in law for pl'ff to have and maintain his action aforesaid against def'ts; he therefore prays judg't, and for cause of demurrer def'ts state and show:

1. That the form of said petition is such, as by law said plaintiff cannot recover or maintain an action.
2. The pleading does not designate a cause of action in form.
3. There is no cause of action set forth in said petition; for that, by law, said def't Babbitt was entitled to the said sums received by him as his fees of office, and was not bound to account to pl'ff for the same.

HALL, HARRINGTON & HALL,
Att'ys for Def'ts.

District Court of the United States, district of Iowa, Southern division—October term, A. D. 1858.

Wednesday, Oct. 20th, 1858.

THE UNITED STATES
vs.
L. W. BABBITT et al. } Petition.

On this day, this cause came on to be heard on defendant's demurrer to the petition of plaintiff, and the same having been argued by counsel, is taken under advisement by the court.

District Court of the United States, district of Iowa, Southern division—September term, A. D. 1859.

Tuesday, Sept. 20, 1859.

THE UNITED STATES OF AMERICA
vs.
L. W. BABBITT et al. } Petition on Bond.

And now, on this day, comes on this cause for hearing upon the demurrer of defendants to plaintiff's petition, the same having been

held under advisement by the court for further argument of plaintiff's counsel; and the court having heard and seen the arguments of counsel, and being fully advised in the premises, orders that the said demurrer be sustained. It is therefore considered by the court that the plaintiff take nothing by its suit, and that the defendants go hence without day.

I, J. C. Burns, clerk of the district court of the United States for the district of Iowa, hereby certify that the foregoing is a true copy of the pleadings, proceedings and judgment of the court in the case of the United States of America vs. Lysander W. Babbitt et al., now of record in the clerk's office of the southern division of said district at Keokuk; and I further certify that there is hereto appended the original writ of error, the original citation with endorsement of service thereon, and a copy of the bond on file and making part of the record of said case in the clerk's office aforesaid.

Witness my hand and the seal of said court this 22d day of November, A. D. 1859, and of the independence the eighty-fourth year. [SEAL.]

J. C. BURNS,
Clerk U. S. D. Court Dist. of Iowa.
By A. T. WALLING,
Deputy.

UNITED STATES OF AMERICA, *ss.*

The United States of America to the honorable the Judge of the district court of the United States for the district of Iowa, southern division, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, between the United States of America and Lysander W. Babbitt, a manifest error hath happened, to the great damage of the said United States, as by their complaint appears: We are willing that error, if any hath been, should be duly errected, and full and speedy justice done to the parties aforesaid in this behalf, and therefore do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said

Supreme Court, this first Monday of December, in the year of our Lord one thousand eight hundred and fifty-eight.

Clerk of the Supreme Court of the United States.

Allowed by— J. M. LOVE, *Judge.*

Filed Sept. 30th, 1859.

J. C. BURNS, *Clerk.*
By A. T. WALLING, *Deputy.*

United States of America to Lysander W. Babbitt, of Pottawatomie county, Iowa, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the district court of the United States for the district of Iowa, southern division, wherein the United States of America are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this first Monday of December, in the year of our Lord one thousand eight hundred and fifty-eight.

J. M. LOVE,
Judge D. C. U. S., Dist. of Iowa.

On this day of in the year of our Lord one thousand eight hundred and fifty- personally before me, the subscriber, and makes oath that he delivered a true copy of the within citation to .

This citation came into my hands on the 9th day of November, A. D. 1859, at 1 o'clock p. m.; served it on the 11th day of November, 1859, by giving the within named Lysander W. Babbitt a true and correct copy thereof. Witnessm y hand this 11th day of November, A. D. 1859.

LAUREL SUMMERS,
U. S. Marshal for the District of Iowa.
By S. H. CRAIG, *Dep't.*

Marshal's fees:

Service.....	$2 00
Mileage from K. to C. B., 300 m...	18 00
	20 00

Know all men by these presents, that we, Charles Mason and William Patterson, of the State of Iowa, are held and firmly bound unto Lysander W. Babbitt, of said State, in the full and just sum of five thousand dollars, to be paid to the said Babbitt, his certain attorney, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this twenty-ninth day of September, in the year of our Lord one thousand eight hundred and fifty-nine.

Whereas, lately, at a session of the district court of the United States for the district of Iowa, in a suit depending in said court between the United States of America and the said Babbitt, judgment was rendered against the said United States, and the said United States having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Lysander W. Babbitt, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the Monday of December next:

Now the condition of the above obligation is such, that if the said United States of America shall prosecute said writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

CHARLES MASON. [SEAL.]
WM. PATTERSON. [SEAL.]

Sealed and delivered in presence of—

Approved by—

J. M. LOVE, *Judge*.

Filed 4th January, 1860.

[REC. CCCXXXII, D. T. 1859.]—5